P.F. 22 of 93

G. R. S. IX-5]

*Previous references.*

1891-92

**192 .**

( L.R. )

**File No.** 116 of 91

**Serial Nos.** 1

*Later references.*

Vide No. 72 of 99

# GENERAL AND REVENUE SECRETARIAT

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*Serial Nos.* 1—7

Major ~~Part~~ B for August 1893.

---

SUBJECT.

Appeal of Hoori Krishnamachar regarding the Shanbhogi of the village belonging to Thobala Mutt

---

Countermanded. [illegible]

WD 2435—GPB—20,000—14-6-20

Translation of Dy. Commrs Endorst. No 150 of 5/11/87 to Mallappa, Shanbogue of Sarvamanyam villages of Binikanahalli & Mugzadahalli:-

(1) Your petition No 133 of 6/1/85 against Hundi Krishnamachar, Guttadar of the Sarvamanyam villages; (2) his petition No 123 of Octr 1887 complaining that you ~~comit~~ commit irregularities and don't prepare the accounts nor furnish requisite references, and (3) Amildar's report No 533 together with the Procgs, have been perused. As it appears from Hundi Krishnamachar's petition that you are not a fit ~~bad~~ person ~~character~~, he has been informed by Endorst. that you have been removed from office and that he should nominate a near kinsman that would discharge the duties satisfactorily ~~and be~~ submissively. Hukum has also been sent to the Amildar to the above effect.

Amildar's findings:-

1st issue

issue :- First Plaintiff Venkatasubbayya (deceased) was the Shanbogue of Megadahalli and Binakanahalli

✓ Is the 2d Plff entitled to bring this suit?

2d Plaintiff Mallappa is his son. He was assisting his father in the discharge of Shanbogue duty. ~~As~~ These facts have been proved by plaintiffs witnesses. It was ~~[illegible]~~ reported by the Amildar in No 155 of 20/7/78 that the 1st plaintiff was too old to do ~~unfit for~~ work, and that the 2d plaintiff be appointed in his stead, as he was qualified for the Office ~~A~~- ~~according to the statement~~ The witnesses for ~~of witnesses~~ 2d plaintiff ~~had~~ say that he has been doing the duties since that time. Defendant admitted that 2d Plaintiff had been holding the Office, receiving pay and mirasi, He also admitted that he drew up a notice, signed it, and published it in the villages, the substance being that the pay of the 2d Plaintiff had been stopped, that he was not doing his duties ~~out of office~~ and that no one should pay him money and obtain receipts from him. There is thus both oral and documentary evidence that 2d plaintiff had been put out of an hereditary office. I am therefore of opinion that 2d plaintiff had every right to bring a suit.

2. Is the suit barred as Res judicata?

2d issue — Defendant produced no records to shew that a suit had been filed in a competent Court either by the present parties or by those from whom defendant got the Sarvamanyam and the plaintiffs in regard to the Shanbogue Office in question. Nor are there any witnesses to prove this. The order connected with the Rev: Miscellaneous Progs called for as desired by defendant seems to be a summary & exparte ~~ex parte judg-~~ order. ~~[illegible]~~ The present suit cannot therefore be considered as res judicata. The definition of res-judicata is quoted below for ready reference. "No Court shall try any suit or issue in which the matter directly and substantially in issue has been heard and finally decided by a Court ~~of~~ of competent jurisdiction in a former suit between the same parties or between parties under whom they or any of them claim, litigating under the same title is said to be res-judicata."

3. Is this suit barred by the law of limitation?

3rd issue — This suit cannot be considered as time barred. As per article 124, Schedule 2 of Limitation Act a hakdar may claim to be restored to his appointment within 12 years from the date of his removal from office.

In the present case it has been settled that the Sarvamanyam villages in question came into defendants possession on 30 January 1885. From this date to the date on which the suit was first filed i.e. 10th Octr, '87 it is only 2 years and some months, and the suit cannot therefore be said to be time-barred. The defendant adduced nothing to prove that the suit was barred by Limitation.

4. Had the Deft. power to suspend 2d Pl ?

4th issue — A man may be suspended or dismissed from his appointment by the Officer in whose gift that appointment is. As per para 7 of C. Commr's General Cir: No 5 of 1872-73 printed at page 26 of the Rev: Manual, the appointment or dismissal of a Shanboque rests with the Govt. The defendant produced no documents to shew that this power was delegated to the Sarvamanyamdars of the villages in question. The Takid given in accordance with the Distt. Office order of 24-10-76 cancelling the suspension of the 1st plaintiff by the Sarvamanyamdars

See page 66. No 4041-47 of 13 Aug/84

and their agents in 1876 was put up with No 25 of the exhibit of Case No 122 on the file of the Mysore Sub Judge's Court; and those papers were sent for for reference and are now put up with the proceedings of this Court. From the foregoing it is clear that the defendant had no authority to suspend the 2d plaintiff from office.

5. To what relief is the 2d Pltff entitled?

5th issue - It will be seen from the aforesaid issues that the 2d plaintiff who had been holding the Shanbogue Office of the said Sarvamanyam villages was wronged by the defendant and subjected to great loss. The defendant is the Guttadar of the Sarvamanyam villages, which are under his management. The object of the 2d plaintiff's suit is to get relief in a Court of competent jurisdiction, and he has no

6. Is the 2d: Plff to blame for misconduct, carelessness & disobedience ?

other means of getting his grievances, redressed. Therefore this issue has to be decided in his favor.

6th issue - Some of the allegations made by the defendant in his ~~wrtt~~ written statement regarding the misconduct of the 2d plaintiff have been proved to be true.

1 The statements of the ~~statements sent~~ defendants' witnesses go to show that the plaintiff was absent from the place where defendant took charge of the villages and that he (plaintiff) did not go to the defendant though often sent for. It would appear from the strange conduct of the plaintiff that he did not ~~had~~ like the ~~no~~ idea ~~that~~ of the defendant ~~would~~ being put in charge of the villages.

2. It is recorded in the charge list ~~puttah~~ signed & given by the deceased agent Viraraghava Chary

to the defendant that Plaintiffs never rendered accounts to the last. The defendants witnesses have stated that even after defendant had taken possession of the villages neither the 1st nor the 2d plaintiff either prepared the accounts required, or gave any help in preparing the same.

6

After defendant had, on 30/1/35, issued a notice to the ryots of the villages that they should not pay the money due by them to the 2d plaintiff, as stated in the 1st issue, the 2d Plaintiff prepared a Counter-Notification in opposition ~~to the defendant~~ and affixed it in the village. The Patel took it & forwarded it with a 'mahazur' to the defendant, and it is put up with the proceedings. The Notification appears to be in defiance of defendant's desire & dominion and authority, though its purport evinces no great enmity on the part of 2d Plaintiff....

The 2d Plaintiff is the

defendant's subordinate and notwithstanding this, ~~then~~ the defendant was ~~at the 2d plaintiff's house~~ in connection with a Civil Jafti; ~~he was~~ abused — much by the ~~latter~~ 2d M. ~~and~~ He was convicted of the said Offence in the Criminal Court - when the 2d plaintiff appealed, the District Magistrate Court confirmed the decision of the lower Court. The records of this case produced by the defendant is put up with the proceedings. The 2d plaintiff's misconduct, carelessness & insubordination have been ~~cited~~ established by the defendant's witnesses & documentary evidence. He is thus amenable to punishment in accordance with Chief Commr's Progs No 102/9 of 11/2/79 vide page 271 of 61 Revenue Manual. The matter is therefore left for the disposal of Dy: Commissioner.

7th issue - The settlement of other issues in favor of or against the 2d plaintiff ~~defendant~~ depends upon the settlement

Note - what the other issues were cannot be gathered from the findings.

21
20/1/64

Revenue Appeal No 174 of 1891-92

Appellant
Hundi Krishnamachar
of Tirumakudlu Narsi-
-pur Kasaba, Mysore
District.

vs

Respondent
Mallappa.

Prior to 1873 the Respondent's father Venkatasubbiah was the Shanbogue of the Sarvamanyam villages of Bina-Kanahalli and Megadahalli belonging to the Ahobala Mutt in the Tirumakudlu Narsipur Taluk. In July 1873, he represented that he was too old to do work and that the Barawarid might be transferred to the Respondent's name. The Amildar recommended the transfer, but no orders appear to have been issued by the Deputy Commissioner. The Respondent, however, continued to do

The whole [illegible]
[illegible]
[illegible] —
[illegible]
[illegible] —
[illegible] admitted [illegible]

20/11/9

the duties.

In 1884 the Appellant obtained the lease of the villages from the Matt. The Respondent did not turn up though sent for often, and failed to produce the villages' accounts, when the Appellant took charge of the villages from the former agent of the Matt. Neither the Respondent nor his father did render proper assistance to the Appellant and produce the accounts afterwards. In January 1885 the Appellant issued a notification to the villagers, interdicting them from making all usual payments to the Respondent. The Appellant and the Respondent complained against each other to the Deputy Commissioner, who in November 1887 declined to retain the Respondent in service. In November 1887 the Respondent filed a suit in the Mysore Munsiff's Court. It was returned for presentatio to the Revenue authorities. Accordingly, in November 1888 the suit was filed in the Deputy Commissioner's Court, the Respondent claiming the Shanbogue Office and Rs 372 on account of loss of pay and emoluments for 2 years. After framing the issues, the case was referred to the Amildar for enquiry. On the findings recorded by the Amildar, the Deputy Commissioner gave judgment on 23-12-91, directing that the Respondent should be restored to Office, and that the Appellant should pay Respondent arrears of pay for 2 years at 1½ Rs per mensem.

The appeal is against the above decision.

The grounds of appeal are:-

1. The suit is barred as Res judicata as the order of the Deputy Commissioner dated 8th November 1937 was not appealed against and thus became final.

2. The Respondent is not fit to hold the office of Akanbogue.

3. The Respondent never discharged the duties within 12 years from the date of his petition (suit).

4. The order of the Deputy Commissioner is illegal and opposed to facts, and the Appellant had no notice of the exact date of the hearing of the case by the Deputy Commissioner.

The Deputy Commissioner has found:-

(1) that the suit cannot be treated as Res-judicata as the order relied on is one-sided and passed on a Miscellaneous petition, and that the suit is not time-barred as it was filed within 3 years of Respondent's dispossession of the office.

(2) that the Appellant was not competent to suspend or dismiss the Respondent of his own authority.

(3) there is nothing to shew that the Respondent refused to assist the Appellant in making collections and performing the duties of his office, that the Appellant and Respondent have fallen out from the commencement of the Appellant's possession of the villages.

(4) The Respondent was not as ready and as obedient to render all the assistance in his power as the Appellant had a right to claim; the Respondent had no justification of issuing notices against Appellant's management of the villages.

The Proceedings shew that the case was posted by the Deputy Commissioner for argument on 13th December/91, and that the Appellant was absent on the date of hearing though served ×, but the Respondent was present. The case was adjourned to 22d December on which date the Deputy Commissioner passed his judgment

× on abode

MYSORE DEWAN'S [illegible]
PETITION DEPARTMENT
RECD. No. 3106R
DATE 21-1-92

Received by Mr. Ramachandra [illegible]

Petn. Deptt.
Regd. [illegible] 21/1/92 [illegible]

Ramasamy [illegible]
21-1-92

~~[illegible]~~

To
~~His Excellency the Dewan Bahadur~~ [illegible]
of Mysore

L.R. 116-91-1

The humble petition of Appeal by [illegible] [illegible] against the [illegible] of [illegible] [illegible] of Mysore dated [illegible] 1891 on the following grounds.

1. The order of the Deputy Commissioner is opposed to facts found by the [illegible] and by the Deputy Commissioner himself on the question of the discharge of duties by plaintiff.

2. The plaintiff's petition is not maintainable and is res judicata [illegible] the order of the [illegible] Deputy Commissioner [illegible] dated 5th November 1887 is final and cannot be reopened by a subsequent Deputy Commissioner.

3. The plaintiff's remedy was by a petition of appeal against the order dated 5th November 1887 and he having failed to do so, the said order is final.

4. The plaintiff on the facts found is not fit to hold the office of Shanbogue.

5. The Deputy Commissioner erred in finding that the facts established are not sufficient to [illegible] [illegible] the plaintiff [illegible]

1. Appeal [illegible]
2. [illegible] Court
3. Copy of order [illegible]
4. Rule 8 I Cl: (1) of the [illegible] Rules

[illegible] 25/1/92

Submitted to the Council
[illegible]
25/1/92

Translate order [illegible] [illegible] [illegible] [illegible] [illegible] [illegible] the order [illegible] appeal [illegible] has been [illegible] [illegible] [illegible] has not [illegible] [illegible] [illegible] [illegible] [illegible] 25/1/92

Submitted to the Council with the [illegible]

6 The Deputy Commissioner erred in finding that the Defendant did not ~~have~~ resort to the Authorities –

7 The plaintiff never discharged his duties for the 12 years previous to the date of his petition –

8 The order of the Deputy Commissioner is illegal and opposed to fact. As the appellant had no notice of the commencement of [illegible] before the Dy. Commissioner.

The appellant begs to state that under the circumstances stated in the order of the Deputy Commissioner and on the facts found by him the appellant will be put to a great loss and inconvenience if the plaintiff is allowed to enter on his duties before the disposal of this appeal. It is therefore prayed that the Deputy Commissioner may be asked to stay the execution of order pending the disposal of this appeal and the appellant is willing and ready to pay the amount ordered by the Deputy Commissioner to the Taluq Kachery to be kept in deposit pending the disposal of the appeal –

Dated 21-1-72
Bangalore

Advocate for appellant

[illegible]

21 — 1 — 92

In the Court of [illegible] of Mysore

Revenue Appeal No. of 92

Appellant

[illegible] Krishna Char

Respondent

[illegible]

I the Appellant above named do hereby retain Mr. S. Ramaswamy Iyer Advocate to appear for and Conduct the Case on my behalf And I agree to be bound by all his acts and pleadings in the Said Case —

D/21 1 92
Bangalore

Accepted.

S Ramaswamy

Advocate for Appellant.

[illegible]

[illegible]

[illegible]

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225

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8/11/87.

(Copy)

Compd

Y. Narasimmiya

Revenue Sheristadar

Deputy Commr's Office

Mysore District

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8-3-72

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Signed M. Krishnaiyengar

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For official use

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"Signed" M. Krishna

[illegible]

Compared

For [illegible]

[illegible] 15-11-89
[illegible] 19. 11. 89.
[illegible] 3-12-89

[illegible]

Y. Narasimaiya

9/3/92

Rev. [illegible]
Mysore

**No.** 3106

Endorsement. L. R. 116-91-2

In reply to his Petition dated 21st January 1892 Mr Mr S. Ramaswami Iyer, Advocate for Appellant [illegible] Krishnamachar, is required to produce in 2 weeks, the Arbitrator's finding ~~is informed that~~ on which Mysore Dy: Commissioner's [illegible] 25/12/91 now appealed against, has been passed.

MYSORE DEWAN'S OFFICE,
PETITION DEPARTMENT,
189 .
15/2/92

By Order
Draft
Chief Secretary.

Mysore Government Central Press Bangalore.—28-9-91—1000.

W.D. 11

Petn. Dafter
Mrhl 14/3/92

Genl 11/3/92

4141 R.
11-3-92

To

The Chief Secretary to ~~the Government of Mysore.~~

L.R. 116-91-3 Petition No. of 1892.

Petitioner
Hari Krishna Char

Counter Petitioner.
Srinivasa Mallayya

With reference to ~~their~~ Endorsement No. 3106 dated 9th January 1892 the Petitioner above named begs to produce herewith the Copy of the Amildar's ~~finding~~ report connected in the above case —

Dated 11-3-92
Bangalore

Advocate for Petitioner

Vide order on P. No.
3106 -

R. (4)

No 7980 Genl issued 13-3-92

L.R. 116-91-4

From the same No 257 d/ 11/3/92

MYSORE DEWAN'S OFFICE,

PETITION DEPARTMENT.

## OFFICIAL MEMORANDUM.

The accompanying Petition No. 3106 dated 21st January/92 received at the Dewan's Office from Hundi Krishna-Char of T. Narasipur Kasba praying that pending disposal of his appeal plaintiff Mallappa may be ordered not to enter upon Shanbogue duties of Benakanhalli, Tharasanahalli is forwarded, together with its list [illegible] enclosures, to the Deputy Commr Mysore Distt for submission of all Proceedings with a brief ~~thereof~~ full report of the facts of the case & on the points taken in the petn —

By Order,

(Draft (Councillor))

10/5

Chief Secretary.

BANGALORE,
Mar 1892

W N

5)

(General Serial No. 30.)

D 16

OFFICE OF THE
3154
11 JUN. 92
F. 32
OF MYSORE

From
The Dy Commissioner
Mysore District

To The Chief Secretary to
the Government of
Mysore.

Dated 11th
Despatched 13th June 1892.

Received

**Enclosures No.** File

General No. 254
No

Re Official Memo No. 20 dated 15th ultimo, for:warding for submission of Proceedings, petition from Rama Krishnama:char of T. Narsipur Kasba regarding the Shanbhogue:ship of Karu-annaia Pi:makanahally and other Villages.

With reference to the above, I have the honor to submit herewith the Proceedings called for in the above as per list attached. -

The English Precis of the Proceedings together with the order passed thereon which is on the file, fully explains the facts of the Case -

The

Peta Branch
[illegible] 14/8/92

Gurumurthaiya
Nobody appears to have examined the enclos.

R. 116-91-5

I do not see the English Precis & the Procs. referred to by the Dy Comr. Where are they? I want them immediately. If not received from the District a docket should be sent at once.
YL 15/8/92

Records in a separate packet brought up by Gurumurthaiya who says that it was with Vijayendra Rao.
15/8/92 YL

V. Sheristadar for memo early
YL 17/8/92

Memo recd & the Commr Clerk memo & Procs [illegible] 29/8/92

B1
15-6-92

The petition and its en:
:closures, received with the Me:
:morandum under reply, are herein
enclosed--

Deputy Commissioner
Mergui District.

Compd.
W.H.

JM

Before the Government of *His Highness* the Maharaja of Mysore.

Appeal No. 177 of 1891-92.

6

| Appellant. | Vs. | Respondent. |
|---|---|---|
| Hirodi Krishnamachar of Tirumakudlu Narsipur by Mr. S. Ramaswami Iyer |  | Mallappa by Mr. [illegible] |

L. R 116-91-6

*Decision.*

The Respondent is the Shanbhog of Binnakanhalli and Megalahalli in the T. Narsipur Taluk, which are Sarvamanyam villages belonging to the Ahobala Mutt. He has been doing the duties of the office since 1878, when his father retired owing to old age.

On the 12th September 1884 the Appellant obtained a lease of the said villages and certain other properties from the Guru of the Ahobala Mutt for a period of 12 years for an annual rent of Rs. 2400. He was for the purposes of the lease clothed with such powers as the Guru possessed

[illegible]

but the lease was liable to be determined in the event of default by the Appellant to pay rent at the stipulated time.

In January 1885 the Appellant suspended ~~a [illegible]~~ the Respondent from the office of [illegible] and issued a notice ~~[illegible]~~ intimating the same to the villagers. The Respondent on his part issued a notice to the villagers warning them against the consequences of making payment to and obtaining receipts from the ~~agent~~ person appointed by the Appellant. Both the parties then submitted Petitions to the Deputy Commissioner, who, on the 8th December 1887, issued a summary order declining to interfering with the use of suspension power of the Appt ~~assist restoration of the Respondent on the ground that from the facts stated in the Appellant's Petition the Respondent seemed to be unfit to hold the office~~.

Before the said order was passed, the Respondent and his father filed a suit in the Munsif's Court on the 20th September 1887, for recovery of damages for loss of [illegible] for two years and for an injunction directing the Appellant not to prevent their performing the duties of the office; but the plaint was, on the 7th November 1887, returned for presentation to a Court having jurisdiction. On the 5th November 1888 the Respondent and his brother filed a regular suit asking on the same reliefs upon the Deputy Commr, Mysore District, who ~~after~~ ~~formal enquiry passed a~~ ~~decree~~ on the 23rd December 1889, passed a Decree, decreeing the restoration of the office of Shanbhog to the Respondent with the payment to him of half his pay (that is his russoom) for the two years referred to in the Plaint. The appeal is against this order.

The Appellant is a mere Guttadar of the Chokala Mutt, and it is questionable whether the Mutt was competent to alienate or delegate its powers in regard to the appointment and removal of hereditary village officers, so as to make the latter subordinate to a

Gustedar who is not recognized by the Government. This point was not considered by the Deputy Commissioner, who however, has found that the alleged charges of insubordination etc. preferred against the Appellt. were not such as to justify his suspension or dismissal. The view taken by the Dy. Commr. is in accordance with the principle laid down by Govt. in their order No 4041-217 dated 13th October 84, published at page 65 of the Revenue Manual of 1886, and the appeal is consequently rejected. Sd/-

28/7/93

[illegible]

29.7.93

No 2289 / R. 722-93 of 29-7-93 / 7-8-93

Copy forwarded to the Dy. Commissioner Mysore District with the usual ~~ret~~ reference to his docket No 254 dated .. June 1893.

By order

Chief Secretary

No. 174

Endt issued.

Mysore Dewan's Office,

Petition Department,

3/8/1893

(7)

8/8/93

Endorsement granted to Hundi Krishnamachar of Tirumakudlu Narsipur (represented by Mr. [illegible] Iyengar)

in reply to his Petition Registered No. 7 [illegible] ~~dated~~ [illegible]-92, appealing against the [illegible] decision [illegible] of [illegible] and the payment [illegible] 1886.

Petitioner is informed that his appeal is rejected.

L R. 116-91-7

"By Order"

Draft (Compiler)

Chief Secretary.

Mysore Govt. Central Press, Bangalore,—9-2-93—2000.